

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID NEY,

Plaintiff,

v.

OPEN SOLUTIONS INC.,

Defendant.

Civil Action No. 06-4354 (JKG)

**SUPPLEMENTAL JURY INSTRUCTIONS
OF DEFENDANT OPEN SOLUTIONS INC.**

As required by the Court's jury trial attachment order, dated January 9, 2007, defendant, Open Solutions Inc., through its undersigned counsel, hereby submits the following supplemental jury instructions.

Respectfully submitted,



Scott L. Vernick, Esquire
David H. Colvin, Esquire
Fox Rothschild LLP
2000 Market Street, Tenth Floor
Philadelphia, PA 19103

Attorneys for Defendant
Open Solutions Inc.

Dated: October 8, 2007

SUPPLEMENTAL INSTRUCTION No. 1

Under the law in this case, you must return a verdict in favor of the Defendant.

SUPPLEMENTAL INSTRUCTION No. 2

Based on the evidence in this case, you must return a verdict in favor of the Defendant.

SUPPLEMENTAL INSTRUCTION No. 3

Under the law and evidence in this case, you must return a verdict in favor of the Defendant.

SUPPLEMENTAL INSTRUCTION No. 4

CONTRACT INTERPRETATION

The evidence that you should consider when interpreting a contract includes:

- (i) all terms and provisions in the contract;
- (ii) the structure of the contract;
- (iii) the testimony of the parties regarding their respective interpretation of the contract;
- (iv) the conduct of the parties that reflects their understanding of the contract's meaning; and
- (v) custom and usage in the industry.

See Commonwealth Dep't of Transp. v. Manor Mines, Inc., 565 A.2d 428, 432 (Pa. 1989); Teamsters Indus. Emp. Welfare Fund v. Rolls-Royce Motor Cars, Inc., 989 F.2d 132, 135 (3d Cir. 1993); Sunbeam Corp. v. Liberty Mut. Ins. Co., 781 A.2d 1189, 1193 (Pa. 2001); Optopics Laboratories Corp. v. Nicholas, Civ. A. No. 96-8169, 1997 WL 602750 (E.D. Pa. 1997).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing supplemental jury instructions of defendant Open Solutions Inc. was served this day via overnight delivery as follows:

Mark S. Sigmon, Esquire
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Attorneys for Plaintiff
David Ney



David H. Colvin, Esquire

Dated: October 8, 2007